ORISSA HIGH COURT
CUTTACK

RVWPET NO.115 OF 2005

From the order dated 13.09.2005 passed by this Court in Misc. Case No.1920 of 2005 (arising out of OJC No.3235 of 2001 disposed of on 23.07.2005).

Deputy Director General, National Sample Survey Organization, and others. ..... Petitioners

Versus

Akshaya Kumar Biswal and others ..... Opposite Parties

For Petitioners - M/s P.K.Jena, N.Panda and D.P.Mohapatra

For Opp.Parties - M/s A.K.Mishra, J.Sengupta, D.K.Panda, G.Sinha and P.K.Nayak.

PRESENT :-

THE HON'BLE MR. JUSTICE I.M.QUDDUSI
AND
THE HON'BLE MR. JUSTICE PRADIP MOHANTY

Date of hearing & judgment : 31.03.2006

I.M. QUDDUSI,J. The petitioners have sought review of the order dated 13.09.2005 passed in Misc. Case No.1020 of 2005 by which the order dated 23.07.2005 passed in OJC No.3235 of 2001 was clarified to the extent that the said order be complied with after considering the age relaxation of the opposite parties in the instant review petition.

2. The brief facts of the case are that the opposite parties in the instant review petition were appointed as Investigators on

13.12.1998 on contract basis initially for one year on the basis of selection pursuant to an advertisement issued in the year 1998 by the National Sample Survey Organisation (Field Operation Division), Department of Statistics, Ministry of Planning Programme Implementation. Thereafter, their term of appointment on contract basis was extended up to the end of December, 2000. They filed O.A. No.634 of 2000 before the Central Administrative Tribunal, Cuttack Bench, for regularization of their services and for payment of equal pay as paid to the regular Investigators on the ground that they were recruited through a selection process comprising of written and viva voce tests. By order dated 2nd March, 2001, the Tribunal dismissed the said O.A., against which the opposite parties in the instant review petition filed OJC No.3235 of 2001 before this Court. The writ petition was disposed of vide order dated 23.07.2005, operative portion of which is quoted hereunder:-

> "We are not inclined to interfere with the impugned judgment and order passed by the Tribunal. However, it is provided that in case in future any Scheme is introduced, the petitioners' suitability shall be considered keeping their experience in view and if it is found that they fulfil the requisite qualification to be engaged on contract basis or in stop gap arrangement, priority will be given to them instead of making appointment or selection from open field by the Department."

Subsequently, the opposite parties filed Misc. Case No.1020 of 2005 for modification/clarification of the order dated 23.07.2005 in view of the fact that though the instant review petitioners issued an advertisement on 28.08.2005 for engagement of four Investigators on contractual basis, they fixed the age limit in the advertisement between 21 and 28 years. The said Misc. Case was disposed of by order dated 13.09.2005 with the clarification that the order dated 23.07.2005 be complied with after considering the age relaxation of the instant opposite parties. By the present application, review of the above order dated 13.09.2005 has been sought for.

3. In the order dated 23.07.2005 passed in OJC No.3235 of 2001, direction was issued as mentioned above, to the effect that in case in future any Scheme is introduced, suitability of the opposite parties in the instant review petition shall be considered keeping their experience in view and if it is found that they fulfil the requisite qualification to be engaged on contract basis or stop-gap arrangement, priority will be given to them instead of making appointment or selection from open field by the Department. To give effect to the above order, it was clarified that age relaxation will be considered as that order cannot be given effect to without the same.

4. Learned counsel for the review petitioners has placed reliance on a recent judgment of the Hon'ble apex Court in the case of ***Union Public Service Commission v. Girish Jayanti Lal Vaghela & others***, JT 2006 (2) SC 137, in paragraph 17 of which, it has been observed as follows-

> " 17. It is neither pleaded nor there is any material to show that the appointment of respondent no.1 had been made after issuing public advertisement or the body authorized under the relevant rules governing the conditions of service of Drugs Inspectors in the Union Territory of Daman and Diu had selected him. His contractual appointment for six months was de hors the rules. The appointment was not made in a manner which could even remotely be said to be compliant of Article 16 of the Constitution. The appointment being purely contractual, the stage of acquiring the status of a Government servant had not arrived. While working as a contractual employee respondent no.1 was not governed by the relevant service rules applicable to Drugs Inspector. He did not enjoy the privilege of availing casual or earned leave. He was not entitled to avail the benefit of general provident fund nor was entitled to any pension which are normal incidents of a Government service. Similarly he could neither be placed under suspension entitling him to a suspension allowance nor he could be transferred. Some of the minor penalties which can be inflicted on a Government servant while they continue to be in Government service could not be imposed upon him nor he was entitled to any protection under Article 311 of the Constitution. In view of these features it is not possible to hold that respondent no.1 was a Government servant."

After considering the facts and circumstances of that case, the apex Court ultimately opined that respondent no.1 cannot be said to be a Government servant as he was working on contract basis and, therefore, he was not eligible for any relaxation in upper age limit for regular appointment under the advertisement issued by the Union Public Service Commission.

5. The law laid down by the Hon'ble apex Court in the aforesaid decision is not applicable in the instant matter inasmuch as neither the review petitioners are going to fill up the posts of Investigator by a regular advertisement on regular basis nor was there any direction by this Court to consider the age relaxation for appointment on regular basis. Further, in the reported case, where S.L.P./Civil Appeal was filed against the judgment of the Bombay High Court by the Union Public Service Commission, it was not pleaded by respondent no.1 that his appointment was made after issuing public advertisement. But in the instant case, the appointment of the opposite parties of the instant review petition was made after issuing public advertisement. Now, again the review petitioners are going to fill up the posts of Investigator only on contract basis and not on regular basis. Therefore, the direction to consider the age relaxation is only in the case of appointment on the same terms and conditions in which the opposite parties of the instant review petition were given appointment.

6. Learned counsel for the review petitioners has drawn the attention of this Court to the circular of the Government of India, Ministry of Statistics and Programme Implementation dated 3rd/06.06.2005 issued by the Director of the Department with the subject "Filling up of vacancies of statistical Investigator GR-4 on contract basis in FOD". The same has been addressed to the Additional Director General, National Sample Survey Organisation (Field Operation Division), New Delhi. In the said letter, it has been mentioned that the Department of Personnel Training have agreed to the proposal of the Ministry for engagement of 437 Investigators on

contractual basis subject to the conditions mentioned in their O.M. No.12016/1/05-Estt(L) dated 01.06.2005.

7. We have perused the O.M. dated 01.06.2005 referred to in the above mentioned letter of the Director dated 3rd/6th June, 2005 by which engagement of 437 Investigators on contractual basis was permitted with the conditions that the vacant posts should be filled up for a maximum period of one year or till the SSC make persons available for filling up the posts on regular basis, whichever is earlier and the persons so engaged shall have no legal claim to regular absorption after the period of contract expires and the minimum educational qualifications and age limit should be the same as that of regular employees. The age limit of a regular employee has been prescribed with a clause of relaxation mentioned separately in the "(Field Operations Divisional National Sample Survey Organisation) Recruitment Rules, 1979" issued vide notification dated 19th February, 1999. The age limit prescribed and the clause of relaxation are reproduced hereunder :

> "**Clause-3. Method of recruitment, age limit and qualification, etc.:-** The method of recruitment, age limit, qualifications and other matters relating to the said post shall be as specified in columns(5) to (14) of the said Schedule.
>
> **Clause-5. Power to relax:-** Where the Central Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons."

In Column-7 of the Schedule, the age limit mentioned is as under :

> "Between 20 to 28 years (Relaxable for Government servants upto 5 years in case of general category candidates and 10 years in the case of Scheduled Castes/Scheduled Tribes and 7 years in case of other Backward Classes in accordance with the orders of instructions issued by the Central Government."

8. In view of the above mentioned statutory provisions which have been made applicable in the case of contractual appointments and since the opposite parties of the instant review

petition were already working on contract basis and again the posts are going to be filled up on contract basis, the opposite parties can be termed as retrenched persons and the review petitioners may very well consider the relaxation in age for that category of persons.

9. In view of the above-mentioned facts and circumstances, no case for review of the order in question is made out. The review petition is, therefore, dismissed.

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I.M.QUDDUSI, J.

PRADIP MOHANTY,J. I agree.

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PRADIP MOHANTY, J.

Orissa High Court, Cuttack
March 31, 2006 / *Samal*